

**CITY OF MILPITAS
UNAPPROVED**

PLANNING COMMISSION MINUTES

January 28, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitaфан called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitaфан, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Heyden, Karlen Lindsay, Pereira and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitaфан invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

Frank De Schmidt, member of Milpitas Chamber of Commerce and Rotary Club, invited the Commission to attend the upcoming Gene Schwab luncheon, honoring City Employee Lechi Nguyen on February 9th at noon at the Embassy Suites hotel. Mr. De Schmidt also noted that the Chamber of Commerce would be hosting the annual crab feed on Friday, February 27th and the Napredak Hall and everyone is invited.

**IV.
APPROVAL OF MINUTES
January 14, 2004**

Chair Nitaфан called for approval of the minutes of the Planning Commission meeting of January 14, 2004.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

There were no announcements from staff.

Vice Chair Lalwani announced that on January 15th at 7 p.m., there would be a public forum at the Milpitas library hosted by the Milpitas Democratic Club for the 20th district assembly candidates. She noted that five candidates would be interviewed by the San Jose Mercury News and the Milpitas Post and invited everyone from the public to attend.

Chair Nitaфан announced that from March 31st through April 2nd, the League of California Cities is sponsoring the Planner's Institute in Monterey. Chair Nitaфан noted that there are two slots available and extended the invitation to Commissioner Mohsin and Commission Garcia.

Commissioner Mohsin and Commission Garcia thanked Chair Nitaфан and noted that they would check their schedule and get back to staff.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda as submitted.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item No. 3**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

James Lindsay, Acting Planning Manager, requested that Consent Item No. 3 remain on the consent calendar with a modified recommendation. He explained that staff and the applicant need time to work out the conditions of approval, and the applicant has agreed to a continuance so staff is recommending that the recommendation be changed to continue the item to the February 11th Planning Commission meeting and the Commission agreed.

Chair Nitafan opened the public hearing on Consent Item No. 3.

There were no speakers from the audience.

**Continue Item No. 3 to the
February 11, 2004 meeting.**

Motion to continue Item No. 3 to the February 11, 2004 meeting.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item No. 3.

***3 TENTATIVE PARCEL MAP NOS. MI2003-4 and MI2003-5:** Request for two tentative parcel maps to convert two separate parcels into four parcels at 991, 995, 1201 and 1225 Montague Expressway, located in Fleming Business Park (APNs: 086-31-058 & 059). Applicant: South Bay Development. Project Planner: Kim Duncan, (408) 586-3283. (PJ #3168) (*Recommendation: Approval with Conditions*)

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

**VIII.
PRESENTATION**

Chair Nitafan introduced the Redevelopment Agency presentation by Finance Director Emma Karlen.

Emma Karlen, Finance Director, presented the financial results of the redevelopment agency financial report and annual report for Fiscal Year 2002-2003. Some of the highlights were as follows:

FY 02-03 RDA Revenue Highlights as compared to FY 01-02

- ❑ 12 % Decrease in Property Tax
- ❑ 3.2 % Increase in Sales & Use Tax
- ❑ 24.4% Decrease in Interest Income
- ❑ 11.6% Decrease in Total Revenue

FY 02-03 Expenditure Highlights

- ❑ \$10.1 million Capital outlay
- ❑ \$9.4 million debt service payments
- ❑ \$816,000 operating expenses
- ❑ \$200,000 housing fund expenses

FY 02-03 Redevelopment Activities – Project Area No. 1

- ❑ Adopted Ordinance to approve the 8th Amendment to the Redevelopment Plan
- ❑ Added 619 acres in the Midtown Area to the project
- ❑ Increased the combined tax increment limit to \$2.4 billion
- ❑ Increased bonded indebted capacity to \$498 million
- ❑ Acquisition of surplus Elmwood property from the County

FY 02-03 Redevelopment Activities – Great Mall Project Area

- ❑ Expanded its entertainment venues with a game room addition to Dave and Buster's restaurant
- ❑ Introduced Putting Edge, an indoor, glow-in-the-dark miniature golf course
- ❑ Two outstanding bond issues:
 - ❑ \$34,360,000 1997 Tax Allocation Bonds
 - ❑ \$28,935,000 2000 Tax Allocation Bonds

Vice Chair Lalwani asked if the \$1 million dollars that was transferred to the state budget was a percentage or a fixed amount from the revenue. Ms. Karlen explained that the \$1 million dollars was neither a percentage nor a fixed amount, and explained that last year, the state mandated that all redevelopment agencies transfer \$75 million dollars, and the City's share came out to be about \$1,009,000. Ms. Karlen explained that this current fiscal year, the amount has increased to \$135 million dollars, and the City's share has increased to over \$1.9 million dollars for the current fiscal year. Next year, the City will make the same projection of a \$1.9 million dollar transfer.

Vice Chair Lalwani asked why are the reports prepared six months late if the ending of the fiscal year was June 2003. Ms. Karlen explained that Finance closed the books in August 2003, and the numbers have to be audited by auditors, and the reports are completed in November and presented to City Council. The annual report is prepared in December 2003 and staff is allowed six months to prepare the reports.

Commissioner Garcia asked what would not get done because of the 11% decrease in revenue. Ms. Karlen noted that because of the City's success in increasing the tax increment limit, in the long run, the City will be able to keep receiving tax increments, so even though the City does not have as much money as last year, the City will still be able to fund all of the projects that the agency is supporting.

Commissioner Sandhu asked if the acquisition of the surplus of Elmwood property from the County is deemed complete. Ms. Karlen replied that the acquisition is not complete yet and that the transaction was negotiated the last fiscal year and the plan is to pay installments to the county.

Commissioner Sandhu asked when will work start on the Elmwood property and Mr. Lindsay noted that KB homes has submitted a proposal to build approximately 720 homes on the surplus properties and staff is expecting the public review period of the EIR in April and does not expect the project to come to the Commission until mid to late summer of this year.

Chair Nitafan noted that on the report the tax allocation bonds show the excess deficiency of revenues over expenditures are \$7.5 million dollars ending June 30, 2003, and asked if that is an indication that the City has refinanced the two bonds to reduce the deficit. Ms. Karlen explained that staff has refinanced the bonds to restructure them and to secure additional funding and when the City issued the 200 million dollar bonds, staff was able to use part of those to refund the existing bonds. She also noted that when the City issued the 2000 bonds at that time, staff didn't know how long the Redevelopment Agency would actually complete the limit, so the bonds were very short, only 8 or 9 years to construct the City Hall building. She explained that staff was successful in increasing the tax limitation so that it was advantageous to restructure the bonds to longer terms so that the annual payment would decrease. Ms. Karlen also added that the other reason staff issued the bonds was because there were a lot of redevelopment projects that will be occurring in the next few years and staff wants to secure funding for those new projects.

Chair Nitafan asked if the yield would probably go down so that the interest would be much lower. Ms. Karlen noted that on the surface, the interest would not be that much lower because the balance for the two bonds combined is \$75 million dollars, so staff issued a 200 million bond so the new debt surface would be higher annually. She also explained that staff took advantage of the interest rate being lower and had the ability to extend the bond, so the annual payment would be much higher by a few million dollars.

Chair noted that on the housing reserve, the City has a deficit of \$56,000 dollars in excess of the revenues over expenditures and asked Ms. Karlen to explain. Ms. Karlen noted that the City generated interest of \$144,000 dollars in the year and expended \$200,000 dollars, so the difference is the \$56,000 dollars. The City had to get an additional transfer from the Redevelopment agency because 20% of the tax increment that the City received was required to be set aside for the housing and so staff got \$5 million dollars, which increased the fund balance by \$5 million dollars.

Chair Nitafan asked how is the City doing financially within the last six months in terms of tax increment revenue. Ms. Karlen responded that the revenue is a little bit down compared to the year before.

IX. PUBLIC HEARING

**ENVIRONMENTAL
IMPACT ASSESSMENT
NO. EA2003-15, USE
PERMIT NO. UP2003-46
AND 'S' ZONE
APPROVAL
AMENDMENT NO.**

SA2003-135: Request to operate a child care facility in the community center of The Crossings at Montague, 757 East Capitol Avenue. Applicant *Montague Parkway Associates*.

Staci Pereira, Assistant Planner, presented Environmental Impact Assessment No. EA2003-15, Use Permit No. UP2003-46 and "S" Zone Approval Amendment No. SA2003-135, a request to operate a child care facility for up to 36 children without providing eight (8) parking spaces and associated site improvements including parking lot modifications and new exterior gated play area in the community center of The Crossings at Montague, 757 East Capitol Avenue. Ms Pereira recommended approval with conditions based on the finding noted in the staff report and also modified condition no 12 to read as follows:

- 12. Prior to building permit issuance, the plans shall indicate the location of the wind directional sock on the subject site that exceeds the height of the building and is adjacent to the child care facility. Prior to Certificate of Occupancy issuance, the wind sock shall be installed. (P, Mitigation Measure 3)*

Commissioner Galang asked if staff received any public comments and Ms. Pereira responded that staff did not receive any public comments on the environmental documents.

Commissioner Sandhu asked what is the square footage of the child care facility at the community center and Ms. Pereira responded 6,000 sq. feet.

Vice Chair Lalwani asked if the public hearing notices were mailed to industry owners or residential neighbors. Ms. Pereira responded that public noticing occurred for all property owners within 300 feet and all residential renters within 300 feet including the entire residential community of 700 to 800 residents at the Crossings who were notified. Also, the residents south of the property in San Jose were notified and the majority of the property owners are industrial businesses.

Chair Nitafan asked what types of chemicals are in the industrial area. Ms. Pereira responded that the analysis determined that 28 businesses within the quarter mile area of the facility used liquid chemicals. Ms Pereira explained that liquid chemicals are different from gaseous chemicals, which the Commission reviewed with the Korean church application on Montague Expressway at the January 14th meeting. The liquid chemicals, so long as they are stored within a closed building and handled properly, would have a far less risk of exposing sensitive receptors compared to gaseous chemicals. Ms. Pereira referred the Commission to the hazardous materials analysis and explained that liquid chemicals include stripper and cleaning solvents, alcohols, acids, basis and other compounds, which were determined at 3 of the 28 facilities in the area.

Regarding special condition no. 4 below, Chair Nitafan asked if Planning staff would be reviewing the elevations.

- 4. Prior to building permit issuance, details and elevations of the 50 square foot storage area located at the eastern end of the upper play area shall be reviewed by Planning staff to ensure consistency with the overall architecture and design of the community/recreation building. (P)*

Ms. Pereira noted that Planning staff would be receiving conceptual elevations in the plans, however, within the permit stream-lining provisions, staff has the ability to review and approve minor modifications involved in the outdoor play area.

Commissioner Moshin asked what types of procedures would be in place for the child-care facility in regards to safety, and asked if the staff would be trained in case of an emergency.

Applicant Alan Friis, 1995 West Lincoln Road, Stockton, CA, noted that Creative Child Care runs a number of institutions of child care and other facilities and they are very familiar with the licensing. He also noted that there is a note from the Fire department requiring that there is an agreement with Creative Child care and the Fire department to have a yearly inspection to demonstrate that the children and staff are trained.

Commissioner Garcia noted modified condition no. 12, and asked if staff really needs to require wind socks. In his opinion, there is not really a requirement or windborne hazard in that local area around installation. He felt that wind socks are not attractive and a signal that there are dangerous things around the area. He asked if this is one area where staff could relax on the requirements.

Ms. Pereira replied that staff could discuss it with the Fire department who required the wind sock; however, the Fire department wanted some indicator of the wind direction since there is no requirement to install an alarm or sensor. She explained that when there are gaseous chemicals in the vicinity, like the Korean church, the Fire department requires a sensor so anytime the materials are released in the air, the Fire department would be notified. She also explained that for this project, there were only liquid chemicals, so if there is a spill, the chemicals have the ability to travel and the Fire department wanted to be able to notify the surrounding uses, and in order to do that, the Fire department would have to determine if there were an upwind or down wind and a wind sock would provide the information.

James Lindsay added that given the condition of the wind sock, staff would do everything possible working with the Fire department to make sure that the wind sock is located in such a place where it is not highly visibly to passerbys and the Fire department would know where to find it.

Commissioner Giordano asked where else in the City has the City required a wind sock and Mr. Lindsay noted that to his knowledge it has not appeared in a condition of approval before. That doesn't mean that the Fire Department hasn't utilized this technique in their administration of the hazardous materials business program throughout the community, so the wind sock condition could have occurred in other locations, but not through the Planning Department. This is the first time that he could recall this type of condition coming forward to the Commission.

Vice Chair Lalwani recalled that before the Crossings were built, it was a residential area, and all of the conditions applied at that time. She asked if staff makes the conditions more difficult if a child care facility comes to a residential area. Mr. Lindsay explained that the location was taken into consideration when the apartment complex was put in, and the difference between a residential complex and a daycare center is that with a daycare center, there is a higher concentration of children and a higher child to adult ratio, whereas with a home, there is typically more of an appropriate ratio because the parents can take care of the situation such as evacuation and sheltering in place. He added that one of the requirements was to have a community warning siren installed within the complex so that it could be used to alert the residents.

Vice Chair Lalwani asked if staff requires extra conditions for people who run a child care facility at home with five to eight children and Mr. Lindsay responded "No".

Chair Nitafan asked if staff would have any requirements for handicap parking. Ms Pereira responded that the current facility meets the handicap parking requirements and the only difference is that the facility is being required to move about five spaces down from their current location and noted that the Fire Department has approved their relocation. She explained that it is still within close proximity to the building's entrance and the applicant proposed to shift those slightly south to provide a more safe and convenient drop off area for parents to have their children go to the door so there is no loss to the handicap parking.

Vice Chair Lalwani asked how many centers does Creative Child care have and Mr. Friis responded "Four" and noted that the Crossings only manages the complex and Creative child care is a lessee, operating out of the recreation building.

Commissioner Mohsin asked what are the parking requirements and how will it fulfill the need of the clients and the traffic. Mr. Friis replied that he doesn't see any impacts and that the basic parking for people that live in the complex is behind the gate. Mr. Friis noted that directly in front of the clubhouse there are 25 unassigned parking stalls, four of which are handicap and three spaces that will be used for staff to park outside the gate. He also noted that the parking lot is full during night hours and the daycare will not be open at that time.

Commissioner Galang asked what are the procedures to hire staff members. Mr. Friis responded that Creative Child care is licensed to manage the staff associated with the child care facility, and the Crossings have done an extensive amount of research to come up with a child care provider that has experience and availability to get the correct licensing for the type of facility, and it becomes their responsibility to do the staffing.

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Motion to approve Environmental Impact Assessment No. EA2003-15, Use Permit No. UP2003-46 and "S" Zone Approval Amendment No. SA2003-135 with modified condition no. 12 and all of the special conditions and findings noted in the staff report.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Mr. Lindsay clarified that the Planning Commission budget for this fiscal year was \$5,900 dollars for training, and to date, \$3,100 dollars have been spent from other Commission members attending training sessions, so the remaining funds is what is limiting the attendance to the Planner's Institute this year. He noted that the Council hasn't directed staff to institute any budget reductions for the Planning Commission training, and Chair Nitafan has requested that he make a request to the Finance Director and City Manager to see if there is an opportunity to enhance the budget this fiscal year to have additional members attend the Planner's Institute.

**X.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:53 p.m. to the next regular meeting of February 11, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary